IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 11705 of 1994

Between:

M/s.Janata Industrial Corporation (India) Ltd., Rep.by its Partner Vasanta Vora 8-3-224,Yousufguda Road, Hyderabad.

..... PETITIONER

AND

Bureau of Indian Standards Rep.by its Director R.L.Reddy
5-8-56,C.L.N.Gupta Marg, Nampally Station Road
Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction or order, more in the nature of Writ of Mandamus quashing the respondent's demand to pay "Special Inspection Charges" mentioned in their letters M.D.H./5:2:9(H.P), dated 04-02-1994 and 03-05-1994.

Counsel for the Petitioner:Mr.M.V.R.NARASIMHA CHARYA

Counsel for the Respondent: Ms.V.RAJAGOPALA REDDY

The Court made the following :

ORDER:

The petitioner firm is running a small scale industry for the purpose of manufacturing deep well hand pumps. It obtained a licence dt.25.2.1987 under the provisions of Indian Standards Institution (Certification Marks) Act, 1952. The same was renewed from time to time. The Writ Petition was field in 1994. The petitioner's licence was valid upto 15.3.1996.

For marking deep well hand pumps with necessary Indian Standards Institution (ISI) mark, petitioner has to get all the manufactured units inspected by the inspecting staff of the respondent bureau by paying certain amount towards inspection fees. If during the inspection it is found that the deep well pumps adhere to ISI standards of the respondent, then only it is permissible for the petitioner to indicate on the product that it conforms to ISI mark. If any unit is marked without proper inspection or specification, petitioner is liable for penal action either by way of payment of compounding fees or otherwise. Be that as it is, when at the first instance deep well hand pumps manufactured by petitioner are found to be inferior quality, to that effect a report shall be sent to Inspecting Officer and thereafter petitioner is required to rectify the defects pointed out by inspecting team and again seek inspection before marking them with ISI. At the relevant time, it appears even at the time of re-inspection there are no additional charges imposed and the petitioner can send a requisition by paying necessary inspection fees to the officials of the respondent. The Director of Bureau of Indian Standards (BIS), Hyderabad, sent a communication dt.4.2.1994 to petitioner. It was informed that during the review undertaken by the

respondent on the operations of the licence for deep well hand pumps certain decisions were taken. These decisions are as under.

1. In case of hand pumps offered to BIS inspection, special inspection charges @ 1% of the value of the hand pumps offered, subject to a minimum of Rs.1,000/- per man-day for inspection, shall be paid to BIS in advance.

2. It is decided that if a lot is rejected after inspection and is again re-offered after segregating the defectives or after reworking on it, this would be treated as a fresh lot for inspection by BIS and you have to pay special inspection charges accordingly.

3. It is decided that the hand pumps would be inspected only against specific order of the purchaser.

4. The special inspection charges of 1% shall be applicable to all the pumps irrespective of the buyer if the pumps are to be marked with BIS mark.

5. It is decided that a minimum of 5 working days notice is necessary for BIS to plan out lot inspection of hand pumps. The offer letter should be accompanied by copy of purchase order and destination for the lot. In case destination is not available at the time of inspection, same shall be communicated to BIS, Hyderabad, as soon as it is received.

6. After the lot is inspected and cleared by BIS Inspecting Officer, a certificate shall be issued by the Inspecting Officer as per our proforma available with the Inspecting Officer.

7. You are advised to ensure that the packing of hand pumps cleared by BIS is as per the packing clause of IS:9301/IS:13056 as applicable. This shall be verified by our Inspecting Officer during lot inspections and periodic inspections.

8. It is decided that the samples drawn during periodic inspections and other inspections shall be dispatched by you within a period of one week and copies of dispatch documents shall be sent to this office. It is observed that the large number of samples are pending at transporters godown and it is the responsibility of the licensees that the samples are delivered at the respective laboratory in good condition.

9. The various records of inspection of assemblies and pumps and raw material consumption shall be maintained in the proforma enclosed.

The petitioner is aggrieved by condition No.1 above according to which if the handpumps are offered to BIS Institution special inspection charges of 1% of the value of hand pumps subject to a minimum of Rs.1,000/- (Rupees one thousand only) per man-day shall have to be paid by the licensee. Assailing the said clause, purportedly imposing special inspection charges, present Writ Petition is filed.

The Director of BIS filed a counter affidavit opposing the Writ Petition. It is stated that as per the conditions of the licence granted to petitioner for deep well hand pumps, the petitioner has to pay “marking fee” as per Second Schedule to the licence. This fees is charged by the respondent for carrying out surveillance to ensure that deep well hand pumps are produced in accordance with the Scheme of Testing and Inspection attached to the licence. Such surveillance is carried out by

regular and surprise periodic visits by BIS at licensee's work, and for testing of pump samples taken from factory and purchased from market in BIS and other BIS accredited laboratories. The marking fee mentioned in the Second Schedule to the licence also covers the charges for testing of samples drawn from the factory, charges for samples purchased from market and cost of the samples purchased from the market besides meeting the costs involved in supervision by BIS and policy making administration. In addition to normal surveillance, batch-wise inspection of hand pumps is carried out by BIS. The consignee-wise inspection on behalf of purchaser in connection with Rajiv Gandhi National Drinking Water Mission was finalized in consultation with Union Minister for Rural Development as well as United Nations International Children Emergency Fund (UNICEF). So as to meet operating expenses to carry out lot inspection BIS decided to levy inspection charges of 1% of the value of hand pumps offered for inspection by BIS. Bureau of Indian Standards Act, 1986, (for short, the Act), Bureau of Indian Standards Rules, 1987 (for short, the Rules), and Bureau of Indian Standards (Certification) Regulations, 1988 (for short, the Regulations) empower the respondent to levy inspection charges. The petitioner has filed a reply affidavit denying the counter averments.

Learned counsel for the petitioner, Sri M.V.R.Narasimhacharya, submits that the respondent has no power or authority under the Rules and Regulations to impose additional inspection charges. Refuting the same, learned counsel for the respondent, Sri V.Rajagopala Reddy, placed strong reliance on Regulation 5(9) of the Regulations to contend that it is competent for BIS to impose inspection charges. Regulation 5 of the Regulations stipulates conditions of licence.

Regulation 5(9) lays down that an inspection made at the request of the applicant or licensee shall be chargeable to the account of applicant or the licensee. Regulation 5(9) further empowers the BIS to levy special inspection charges. Having regard to these provisions, learned counsel for the petitioner, does not dispute the power of BIS to levy inspection charges, whenever such inspection is undertaken at the request of the licensee. He only submits that the respondent is demanding additional inspection charges even though the deep well hand pumps manufactured by petitioner are subjected to inspection in a routine course. As per the counter averments the respondent decided to levy inspection charges of 1% of the value of the hand pumps subject to minimum of Rs.1,000/- (Rupees one thousand only) with reference to deep well pumps manufactured by petitioner and other units under Rajiv Gandhi National Drinking Water Mission. This only suggests that if the petitioner wants to supply deep well hand pumps for the said Mission, presumably undertaken with the aid given by UNICEF, necessarily petitioner has to comply with the Regulations. As rightly pointed out by learned counsel for the respondent, in the event of petitioner's units being rejected for ISI mark and again petitioner requesting for re-inspection, at the time of re-inspection 1% of the value of hand pumps cost has to be paid towards additional inspection charges. Further, there is nothing in the Regulation, which do not permit imposition of additional inspection charges as decided by the BIS. The power under Regulation 5(9) is sufficient enough to enable BIS to impose inspection charges as well as additional inspection charges. The

apprehension of the petitioner that in addition to the regular inspection charges, petitioner unit will be compelled to pay additional inspection charges is misconceived. To that extent, learned counsel for the respondent also submits that additional inspection charges at the rate of 1% value of hand pumps or subject to minimum of Rs.1,000/- (Rupees one thousand only) will be levied only when the unit manufacturing deep well hand pumps requires or requests for re-inspection of the units. This clarification would safeguard the interest of the petitioner.

With the above observations, the Writ Petition is disposed of.

_____

(V.V.S.RAO, J)

19.7.2004

bnr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Director, Bureau of Indian Standards,

5-8-56, C.L.N.Gupta Marg,

Nampally Station Road,

Hyderabad-1

2.2CD copies

*Form-NIC-OGS/WP{**CHP**}*